

KRZB (FM)/Texas Grace Communications**P.O. Box 398****Wichita Falls, TX 76307****(914) 352-9087/(228) 388-9011**

FEB - 7 2001

FCC MAIL ROOM

February 2, 2001

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th St. SW
Room TW-B204
Washington, D.C. 20554

Sent by Overnight Courier

98-43

Re: KRZB (FM) Archer City, TX --- BMPH-19990217IB Reply Ref #1800B3-GDG
Submission of Emergency Pleading to be directed to Audio Services Chief:

"Emergency Request for Tolling Acknowledgment on KRZB Construction Permit Effective November 20, 2000 (The Date Upon Which "Petition for Reconsideration"/ "Application for Review" Appeal Process Was Initiated), With Special Request for Necessary Evidentiary Letter From Bureau Chief Verifying That Present KRZB Permit Has Tolloed and is Thereby Still Valid"

Dear Madam Secretary,

Please find enclosed for immediate delivery to Audio Services Chief Linda Blair an Original, plus (4) Copies, of the emergency pleading captioned above.

Please feel free to contact the undersigned, or Texas Grace's legal counsel, John Trent, at (703) 437-8400, should there be any questions regarding this submission.

It is also requested that a **"Stamp in and Return Copy"** of the pleading be sent back to Texas Grace in the addressed, postage-paid envelope enclosed.

The Secretary's courtesy is gratefully appreciated.

Sincerely,



Dave Garey,
Proprietor, Texas Grace Communications

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of:)	
)	Reply Reference # 1800B3-GDG
Tolling/Extension Request for KRZB (FM))	MM Docket No. 98-43
Construction Permit pursuant)	FCC 98-281; FCC 99-267
to tolling provisions under)	KRZB (FM), Archer City, TX
47 C. F. R. 73.3598(b)(i) and (ii))	Facility # 79024
and all other applicable Commission)	File # BMPH-19990217IB
rules, memorandum, precedent,)	
report and order, or practice)	

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To: The Chief, Audio Services Division

EMERGENCY REQUEST FOR TOLLING ACKNOWLEDGMENT

ON KRZB CONSTRUCTION PERMIT EFFECTIVE NOVEMBER 20, 2000¹

(THE DATE UPON WHICH "PETITION FOR RECONSIDERATION"/

"APPLICATION FOR REVIEW" APPEAL PROCESS WAS INITIATED).

WITH SPECIAL REQUEST FOR NECESSARY EVIDENTIARY LETTER FROM BUREAU CHIEF

VERIFYING THAT PRESENT KRZB PERMIT HAS TOLLED AND IS THEREBY STILL VALID

Pursuant to applicable Commission Rules, Texas Grace Communications ("Texas Grace"), proprietor/permittee of station KRZB (FM) licensed to Archer City, Texas, hereby submits the above-captioned Emergency Request for Tolling Acknowledgment and Evidentiary Letter from the Bureau Chief.

By this submission, acknowledgment is specifically sought from the Commission that the present and only KRZB construction permit held by Texas Grace permitting construction of a C2 broadcast station at Archer City,

¹ Although Texas Grace continues to maintain that KRZB's C2 Permit at Archer City under file # BMPH-19990217IB is entitled to a full three (3) year lifespan with expiration of no earlier than February 7, 2003, the pleading herein simply seeks tolling effective November 20, 2000 upon the present Permit. Under FCC 99-267, such tolling must become effective with the November 20, 2000 date whereupon KRZB filed and the Commission accepted Texas Grace's "Petition for Reconsideration" for review of an "extension grant" request as had been denied by the Chief October 20, 2000. The November 20, 2000 tolling date must remain in place while Texas Grace exercises its right to seek legal redress through the particular process initiated by filing of the noted "Petition for Reconsideration", continuing through FCC resolution of KRZB's "Application for Review" filed on January 16, 2001, and "any subsequent court appeal thereof". Texas Grace has not, by this instrument, rescinded its previously pleaded requests for, or right to receive, the full 3-year permit lifespan for construction of KRZB's broadcast service at Archer City.

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Texas (under File #BMPH-19990217IB, hereinafter "Permit", incorporated by reference) *has tolled as of November 20, 2000*, and will remain tolled with no further time deducted from its lifespan until resolution of KRZB's Application for Review (timely filed with the FCC January 16, 2001, hereinafter "Application for Review", incorporated by reference), and any subsequent court appeal thereof.

In the public interest of being able to proceed timely with construction of the vital KRZB broadcast service, Texas Grace respectfully requests that such acknowledgment of the aforementioned tolling status of its Permit be immediately made by the Audio Services Bureau Chief ("Chief") in the form of a necessary evidentiary letter (which Texas Grace can attach to its' Permit) enumerating these vital points:

(a) While the face of the Permit specifies an expiration date of February 7, 2001, the Permit has "tolled" effective November 20, 2000, and is thereby still valid for constructing the designated broadcast station. Construction is permitted as of the date of this Evidentiary Letter, and through such date as resolution is made of a pending Application for Review filed by Texas Grace with the FCC, and any subsequent court appeal thereof, in addition to that period of time specified under section (b).

(b) Upon such "future date" as the FCC has issued its disposition on the Application for Review, and any subsequent court appeal thereof has either been successfully litigated or fully disposed of, the equivalent of time between November 20, 2000 and February 7, 2001 will still be remaining on the lifespan of the present Permit, and will begin to be deducted each day effective with such "future date".

(c) Any interested party reading this Evidentiary Letter may contact the FCC Bureau Chief, who will be willing to verify that the Permit's lifespan has indeed extended beyond February 7, 2001. The Bureau Chief will also be willing to verify to any interested party the Permit's continued "valid" status for permitting construction of the specified broadcast station.

The Chief is also asked to ensure that the Commission's databases reflect the preservation of the present KRZB C2 Permit specifying broadcast service at Archer City (and its specific transmission site coordinates) through conclusion of this ongoing appeal process, inclusive of resolution of Texas Grace's "Application for Review" and any subsequent court appeal thereof.

In support thereof, Texas Grace states as follows:

As a matter of record, Texas Grace has clearly followed established FCC appeals procedure with respect to seeking timely legal redress following the Bureau Chief's October 20, 2000 denial of KRZB's request seeking "extension grant" on its Archer City Permit (KRZB Tolling Request dated March 5, 1999, incorporated by reference).

Adherence to the noted appeals process has included Texas Grace's timely filing of the following two (2) specific pleadings: "Petition for Reconsideration of FCC Refusal to Grant Requested Tolling/Extension of Time on KRZB/Archer City, TX Construction Permit" ("Petition for Reconsideration", accepted by FCC November 20, 2000, incorporated by reference); and the already referenced "Application for Review Before FCC Chairman and Commissioners of Audio Services Chief's Dismissal of Texas Grace Communications' *"Petition for Reconsideration"* to Grant Legitimate Tolling/Extension Time on KRZB/Archer City, TX Construction Permit".

Under FCC Tolling Provisions as stated within FCC 99-267, the filing by Texas Grace and acceptance by the Commission of KRZB's "Petition for Reconsideration" and "Application for Review" pleadings immediately tolls the present KRZB Permit effective November 20, 2000--the date of FCC file stamping of the precursor "Petition for Reconsideration" pleading--and through such time as the "Application for Review" and any subsequent court appeal thereof have been resolved or disposed of.

As a matter of law, the Commission states under FCC 99-267 in its Streamlining Order that tolling must take effect on a construction permit when "the permit itself is the subject of administrative or judicial review". The FCC Order defines "administrative review" as including "petitions for reconsideration and applications for review of a permit or extension grant, and any subsequent court appeal thereof"---encompassing precisely the pleadings tendered by Texas Grace.

Clearly, Commission rules under FCC 99-267 allow this permittee the right to seek corrective redress and appeal upon denial of a permit "extension grant" without penalty of losing the permit while seeking such redress. Hence, the filing of the precursor "Petition for Reconsideration" which initiates the appeal process simultaneously implements tolling on the permit, effective November 20, 2000.

This tolling becomes even more compelling and vitally necessary given the inordinately lengthy timeframe during which the Bureau Chief sat on Texas Grace's timely filed request for Tolling Extension--a request made March 5, 1999, but not answered by the Chief until October 20, 2000--over nineteen (19) months later.

The Chief's tardy response meant that Texas Grace did not learn of denial of its requested permit extension grant until there was barely more than 3 months lifespan remaining on the subject Permit (please see Texas Grace's "Emergency Motion for Stay of Tolling Request Denial", accepted by FCC November 20, 2000, incorporated by reference). Had the Chief replied to the permittee in a more timely fashion, then Texas Grace would have been able to seek corrective redress without impending cancellation of its Permit at this time.

There is simply no foundation in law to deny Texas Grace the instantaneous tolling on its present Permit effective November 20, 2000, and through resolution of the noted appeals process, as stipulated by the Commission itself under 99-267. However, should the Chief refuse to follow the law on this matter, Texas Grace will obviously be irreparably damaged--particularly in light of the Chief's tardy denial notification on KRZB's request for extension grant--in that the permittee would have been given absolutely no time to seek corrective redress/appeal of such denial without loss of the permit before the Commission's own appeals procedure could be followed by the permittee.

Clearly, the over one and a half year period during which Texas Grace waited for an answer on its permit extension grant request from the Chief must not be held against the permittee. Immediate implementation of tolling on the permit, effective November 20, 2000, ensures that the Chief's delayed response will not prejudice the permittee, and allows the seeking of redress without loss of the Permit, separate and apart from ultimate resolution of the pending "Application for Review" and any subsequent court appeal thereof.

IMMEDIATE implementation of tolling effective the November 20, 2000 date also serves another vital purpose, in that it allows construction of KRZB's Archer City facility to proceed immediately, which is plainly in the public interest.

Since Texas Grace has clearly demonstrated that its Permit has tolled, as a matter of Law, effective November 20, 2000, and through the time associated with the procedure of seeking legal redress set forth by the Commission, the only remaining issue in this pleading is the dilemma posed by Texas Grace's holding of a Permit which still enumerates an expiration date of February 7, 2001.

This situation in and of itself makes it impossible for Texas Grace to proceed with construction, despite the noted tolling on the Permit, since all parties to whom Texas Grace must show its permit will not believe the Permit to still be valid. These parties would understandably include members of the local service area with whom Texas Grace has been working to facilitate construction, such as local utility representatives, county officials, equipment and construction material vendors, and Texas Grace's financial institution, among many others.

Texas Grace therefore desperately needs the requested "Evidentiary Letter" from the Bureau Chief to verify tolling on, and thereby the continued validity of, the subject Permit.

Such a request for this Evidentiary Letter was previously made by Texas Grace directly to Bureau analyst Glen Greissman (on January 23, 2001), who indicated that he lacked authority to provide such an Evidentiary Letter. Due to the urgency of the situation, Texas Grace next contacted Charles Willoughby of the FCC's Inspector General's Office, who was kind enough to offer to act as a go-between with the Bureau Chief in requesting this Evidentiary Letter. However, on January 26, 2001, the Inspector General's Office informed Texas Grace that it was similarly turned down in making this request in KRZB's behalf.

We hope that the instant Texas Grace pleading herein will rectify this situation.


Texas Grace wishes to simply be able to proceed with construction of its broadcast facility licensed to Archer City--a goal which we hope and trust is shared by the Chief--and concurrently, to not be penalized with loss of our Permit during the seeking of corrective redress through the mechanism set forth by the FCC.

To this end, we respectfully ask the Chief to uphold Commission Rules, and honor the foundation of the Law, which dictates that the present KRZB Permit must not expire on February 7, 2001, but instead, is tolled effective November 20, 2000 through the date of resolution of Texas Grace's pending "Application for Review" and "any subsequent court appeal thereof". We also respectfully request acknowledgment of such tolling by the Bureau Chief through a necessary "Evidentiary Letter" that Texas Grace can attach to its Permit, which, as demonstrated, is essential to proceeding with construction, and thereby serving the public who will clearly benefit from provision of this local broadcast service.

The Chief's personal attention to this urgent, specific pleading is gratefully appreciated.

Respectfully Submitted,

Texas Grace Communications

By: _____

Dave Garey, Proprietor

February 2, 2001

CERTIFICATION

I, Dave Garey, proprietor of Texas Grace Communications, and permittee of KRZB (FM) licensed to Archer City, Texas, do hereby verify that the statements contained in the instant document are true and correct to the best of my knowledge and belief. Although this submission is authored by Texas Grace's proprietor, John Trent remains legal counsel of record for Texas Grace Communications, and it is therefore respectfully requested that he be simultaneously served by the Commission or other interested parties with all relevant procedural or response documents.

Respectfully Submitted By:
Texas Grace Communications



Dave Garey, Proprietor

February 2, 2001

Dave Garey
Texas Grace Communications
P.O. Box 398
Wichita Falls, TX 76307

cc:

John Trent
Putbrese, Hunsaker & Trent
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